

# EXHIBIT A

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

ORACLE AMERICA, INC., )  
Plaintiff, )  
vs. ) No. CV 10-03561 WHA  
GOOGLE, INC., )  
Defendant. )

-- HIGHLY CONFIDENTIAL, ATTORNEYS' EYES ONLY --

Videotaped Personal Capacity deposition of  
ANDREW E. RUBIN, taken at the law offices of  
King & Spalding LLP, 333 Twin Dolphin Drive,  
Suite 400, Redwood Shores, California,  
commencing at 8:39 a.m., on Wednesday,  
July 27, 2011, before Leslie Rockwood, RPR,  
CSR No. 3462.

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1 ~~Foerster, counsel for Oracle.~~

2 MS. TERAGUCHI: Yuka Teraguchi of Morrison &

3 ~~Foerster, counsel for Oracle.~~

4 MR. HOLTZMAN: Steve Holtzman, Boies,

5 ~~Schiller & Flexner, counsel for Oracle America.~~

08:40:33

6 MR. REBLITZ-RICHARDSON: Beko

7 ~~Reblitz-Richardson, Boies, Schiller & Flexner, on behalf~~  
8 ~~of Oracle America.~~

9 MS. TIPTON: Jessica Tipton, Morrison &

10 ~~Foerster, on behalf of Oracle America.~~

08:40:44

11 MS. ANDERSON: Christa Anderson for Google,  
12 Inc., and the witness.

13 MR. BABER: Bruce Baber, King & Spalding, for  
14 Google.

15 MR. HWANG: Renny Hwang of Google.

08:40:49

16 THE VIDEOGRAPHER: Thank you.

17 The witness will be sworn in, and we can  
18 proceed.

19 THE REPORTER: Would you raise your right  
20 hand, please.

21 You do solemnly state that the evidence you  
22 shall give in this matter shall be the truth, the whole  
23 truth and nothing but the truth, so help you God.

24 THE WITNESS: Yes.

25 THE REPORTER: Thank you.

1 A. Okay.

2 Q. Before Google acquired Android Inc. --

3 MS. ANDERSON: Sorry, Counsel, before you  
4 start your question, could you clarify which deposition  
5 you're starting on? Because you've noticed a few things 08:42:15  
6 for today.

7 MR. JACOBS: Yes.

8 MS. ANDERSON: And I just want to make sure  
9 we're clear on the record.

10 MR. JACOBS: Fair enough. So this is the 08:42:22  
11 individual deposition, and I'll -- we'll be clear when we  
12 go into 30(b)(6) territory.

13 MS. ANDERSON: Thank you, Counsel.

14 Q. BY MR. JACOBS: Before Google acquired 08:42:31  
15 Android, did you conduct any review of Sun patents as  
16 they might relate to your planned development of what  
17 became the Android system?

18 A. No, I didn't.

19 Q. From the acquisition to the filing of the  
20 lawsuit by Oracle America against Google on August 12th, 08:42:55  
21 2010, did you conduct any review of Sun, later Oracle  
22 America, patents as they related to Android -- the  
23 Android system?

24 MS. ANDERSON: And objection. Just caution  
25 the witness to the extent if responding to the question 08:43:11

1       would cause you to reveal any communications with  
2       counsel, I instruct you not to answer on grounds of  
3       privilege, but otherwise, you may answer the question.

4                   THE WITNESS: No.

5       Q. BY MR. JACOBS: Let's just spend a minute on           08:43:23  
6       that privilege instruction. One of the things I need to  
7       do today in order to do my job is to make a clear record  
8       of where you've been instructed not to answer, where  
9       you've followed that instruction, and where, but for the  
10      instruction, there might have been testimony, so that the       08:43:36  
11      Judge can look at the record and determine clearly where  
12      Google, as the litigant, is taking a position on the  
13      privilege.

14                   So your counsel just instructed you not to  
15       answer to the extent the answer might reveal privileged       08:43:48  
16       information, and you're following that instruction,  
17       correct?

18       A. That's correct.

19       Q. But for her instruction, would you have been  
20      able -- would you have provided testimony on the question       08:43:59  
21      of a review of Sun, later Oracle America's patents in  
22      connection with Android?

23       A. Can you ask the question in -- I don't  
24      understand.

25       Q. Did that instruction cause you to answer the       08:44:13

1 ~~question differently than had the instruction not been~~  
2 ~~given?~~

3 A. No.

4 Q. Why did you not conduct a review of Sun,  
5 later Oracle America's patents as they might relate to 08:44:28  
6 Android?

7 A. Well, look, I looked at the nature of Sun's  
8 business, I looked at the nature of Oracle's business.  
9 I'm a computer scientist. I graduated with a degree in  
10 computer science. I had, in 1978, a Commodore PET 08:44:43  
11 computer that, you know, used the basic language that had  
12 a bytecode interpreter.

13 So I knew generally the area that I was  
14 working in, obviously, and I didn't think there was any  
15 conflict. So I didn't think there was a need to review 08:44:58  
16 any patents. This stuff has existed for a very long  
17 time.

18 Q. You were aware that Sun, later Oracle  
19 America, had an extensive patent portfolio in the area of  
20 Java; correct? 08:45:14

21 MS. ANDERSON: Objection. Form.

22 THE WITNESS: I -- you know, again, I didn't  
23 look specifically at the breadth of their intellectual  
24 property. I assume, you know, if you're in a business,  
25 you're going to protect your work. But also it was my 08:45:26

1 assumption that this work had been there, you know,  
2 pretty much, you know, part of computer science that  
3 you're taught in college.

4 Q. BY MR. JACOBS: So you were aware that Sun  
5 had an extensive portfolio of Java-related patents? 08:45:39

6 MS. ANDERSON: Objection. Form.

7 THE WITNESS: That's not what I said.

8 Q. BY MR. JACOBS: Were you -- were you not  
9 aware of that?

10 A. I didn't -- I honestly didn't spend a lot of 08:45:48  
11 time thinking about it.

□□ 155

12 (Exhibit PX305 was marked for  
13 identification.) □□ 155

14 Q. BY MR. JACOBS: Exhibit 305 is an email  
15 string. The last email on the string is dated 08:46:39  
16 November 12, 2006.

17 Do you see that?

18 A. Yes.

19 Q. I'd like to ask you about your email to -- I  
20 believe to Chris DiBona, but maybe you can help interpret 08:46:48  
21 how the string should be read. It's the one from you  
22 dated November 12, 2006 that reads as follows: "I've  
23 been advised that Sun will offer a link exception to GPL  
24 so that you can link your app with their class libraries  
25 and not have the copy left force you to Open Source your 08:47:11

1 app. If they do not, then it's a play for a dual  
2 license. They still have patents and trademarks."

3 Do you see that?

4 A. Uh-huh.

5 Q. ~~That is what you wrote; correct?~~ 08:47:17

6 A. ~~Correct.~~

7 Q. ~~And who did you write that to?~~

8 MS. ANDERSON: ~~I just want to -- objection.~~  
9 ~~Form. The witness should have an opportunity to review~~ 08:47:25  
10 ~~the document before you begin asking a series of~~  
11 ~~questions about it.~~

12 ~~If you need an opportunity, go ahead. If you~~  
13 ~~don't --~~

14 THE WITNESS: ~~It's quite a detailed document,~~ 08:47:33  
15 ~~but it mostly contains a forward of a press release made~~  
16 ~~by Sun Microsystems. I believe I was responding -- well,~~  
17 ~~I was responding to the entire thread which had an alias~~  
18 ~~on it, which was the Open Source team, which included~~  
19 ~~Chris DiBona.~~

20 Q. BY MR. JACOBS: ~~And who is Greg Stein?~~ 08:47:54

21 A. ~~Greg Stein, I believe, was one of the product~~  
22 ~~guys on the Open Source team. He was an evangelist for~~  
23 ~~Open Source, I believe.~~

24 Q. ~~The Open Source team is -- what is the Open~~  
25 ~~Source team?~~ 08:48:11

1 A. ~~It's a team of evangelists that is managed by~~  
2 ~~Chris DiBona, and they go out and educate people about~~  
3 ~~Open Source, what it means to be Open Source, how Open~~  
4 ~~Source can benefit their businesses, and so forth.~~

5 Q. You wrote: "They still have patents and 08:48:24  
6 trademarks." Correct?

7 A. That's correct.

8 Q. And the "they" is Sun; correct?

9 A. That's correct.

10 Q. ~~And you were saying -- you were noting this~~ 08:48:31  
11 ~~in order to make sure that people understood that there's~~  
12 ~~a range of intellectual property rights associated with~~  
13 ~~the program in question; correct?~~

14 MS. ANDERSON: Objection to form.

15 THE WITNESS: No, that's not correct. 08:48:47

16 Q. BY MR. JACOBS: Well, what did you mean by  
17 "they still have patents and trademarks"?

18 A. Well, the email was discussing -- so this is  
19 in response to Sun basically announcing that they were  
20 Open Sourcing parts of Java, and the conversation was 08:48:58  
21 about Sun's dual license strategy. Because with GPL,  
22 it's effectively useless to Open Source something under  
23 GPL and use it in embedded devices like cell phones  
24 because there's this trick in the GPL which is of viral  
25 nature.

08:49:17

1 ~~access, and then forcing people to come back to Sun~~  
2 ~~because the threat of a suit, if you adopt their stuff,~~  
3 ~~was real.~~

4 Q. When you wrote "they still have patents and  
5 trademarks," what was in your mind about what patents Sun 08:51:39  
6 had?

7 A. Look, like I said before, I assume they're  
8 running a business, they're inventing intellectual  
9 property, they're protecting it through the patent  
10 system. Through GPL, I didn't know what they were, but I 08:51:53  
11 knew that it was dangerous to use the stuff without  
12 knowing exactly what it was.

13 So effectively you have to go back to Sun,  
14 ask them what they considered their intellectual property  
15 and, you know, try to figure out what the trick was if 08:52:06  
16 you wanted to use the technology.

17 Q. ~~Now, by that time, by 2006, you had applied~~  
18 ~~for patents over the course of your carrier, correct?~~

19 A. Yes.

20 Q. ~~You had applied for a patent -- for several~~ 08:52:15  
21 ~~patents while you were at Danger, correct?~~

22 A. Yes.

23 Q. ~~And since Google acquired Android, you've~~  
24 ~~applied for patents; correct?~~

25 A. ~~Google has applied for patents with my name~~ 08:52:29

1 ~~intellectual property?~~

2 MS. ANDERSON: Objection. Form.

3 THE WITNESS: Well, look, I mean, so this  
4 article looks great. I haven't read it. All sorts of  
5 analysts are making speculations about Sun's business. 08:55:04  
6 This is dated 2008. My email is 2006. I don't think  
7 they're related at all.

8 Q. BY MR. JACOBS: But my question is: As of  
9 November 12th, 2006, when you wrote "they," referring to  
10 Sun, "still have patents," were you aware that Sun had a 08:55:18  
11 broad and deep portfolio of intellectual property?

12 MS. ANDERSON: Objection. Form.

13 THE WITNESS: Yeah, I was not.

14 Q. BY MR. JACOBS: You were not?

15 A. I didn't know how -- I didn't know the 08:55:26  
16 breadth of Sun's portfolio.

17 Q. Were you aware that -- sorry.

18 A. I never investigated the breadth of Sun's  
19 portfolio.

20 Q. To the best of your knowledge, between 08:55:35  
21 Google's acquisition of Android and the filing of the  
22 lawsuit in this action, did Google ever investigate  
23 Sun's, later Oracle America's patent portfolio as it  
24 might relate to Android?

25 MS. ANDERSON: Objection. Again caution to 08:55:53

1 the witness to the extent that responding to this  
2 question would cause you to reveal any communications  
3 with counsel, I instruct you not to answer on grounds of  
4 privilege. But otherwise, you may answer.

5 THE WITNESS: Yeah, of the parts of Google 08:56:04

6 that I manage and I operate, the -- there was no  
7 instruction to go investigate the breadth of Sun's patent  
8 portfolio.

9 Q. BY MR. JACOBS: You referred to an  
10 instruction. You said there was no instruction? 08:56:17

11 A. Yeah. Me as managing a division with Google  
12 didn't instruct anybody to go off and do something. I  
13 have no knowledge of somebody underneath me going off and  
14 doing something to investigate the breadth of Sun's  
15 portfolio. 08:56:32

16 Q. The -- and you're following your counsel's --  
17 I just need to do this privilege thing again. You're  
18 following your counsel's instruction?

19 A. Yeah. Obviously, like I don't have insight  
20 into every -- you know, every team at Google. These are 08:56:43  
21 large organized teams so they don't report to me. If  
22 there's another team that goes off and does something, I  
23 may not know about it.

24 Q. So but for your counsel's instruction, would  
25 your answer have been different to my question? 08:56:56

1 ~~answer the question?~~

2 ~~THE WITNESS: Yes, I am.~~

3 ~~Q. BY MR. JACOBS: The lawsuit was filed on~~  
4 ~~October 12, 2010 — excuse me, August — start over.~~

5 The lawsuit was filed on August 12, 2010. 09:02:43

6 After the lawsuit was filed, did you conduct any review  
7 of Oracle America's patent portfolio in connection with  
8 Android development?

9 ~~MS. ANDERSON: Objection to the extent that~~  
10 ~~responding to this question would cause you to reveal any~~ 09:03:04  
11 ~~communications with counsel, I instruct you not to answer~~  
12 ~~on grounds of privilege. Otherwise, you may answer.~~

13 THE WITNESS: I mean, look, all right, you  
14 asked the question before whether I have personally done  
15 reviews of the legal situation, and I answered no. It 09:03:18  
16 didn't change throughout the release cycles whether I did  
17 or not.

18 Q. BY MR. JACOBS: So and just to be clear, my  
19 earlier question was before the lawsuit, and now I was  
20 asking after the lawsuit, and your answer is the same: 09:03:30  
21 You have conducted no review?

22 A. I personally am not responsible for legal  
23 reviews for the Android system.

24 Q. ~~Are you aware of any review that has been~~  
25 ~~conducted of the Android system in view of Oracle~~ 09:03:43

1 enhancements, especially since we've been sued by Oracle  
2 America, before we go off in a particular direction?

3 MS. ANDERSON: Objection. Form. And  
4 instruct the witness not to answer to the extent it calls  
5 for any communications or would reveal any communications  
6 with any counsel on the grounds of privilege. 09:04:48

7 THE WITNESS: I mean, generally speaking, we  
8 see software development as an innovation process so we  
9 don't really second-guess innovation. We do the  
10 innovation -- we do it in a way that, you know, our 09:05:01  
11 education and training, you know, teaches us to do, and  
12 our goal is just to build great products that consumers  
13 love.

14 Q. BY MR. JACOBS: So the answer to my question  
15 is "no"? 09:05:11

16 MS. ANDERSON: Objection. Form. And the  
17 same privilege instruction.

18 Q. BY MR. JACOBS: Are you --

19 A. I don't know. You can ask that question  
20 again. 09:05:21

21 Q. Okay. Fair enough. Let's start over.

22 As you have added functionality to Android  
23 over time, have you ever conveyed to anyone at Google, as  
24 we're adding enhancements, we should look at Oracle  
25 America's patents and decide whether we're going to go 09:05:41

1 off in a particular direction or not?

2 MS. ANDERSON: Objection and instruct the  
3 witness not to answer to the extent it would cause you to  
4 reveal any communications with counsel on the grounds of  
5 privilege.

09:05:54

6 THE WITNESS: I mean, generally speaking, the  
7 way you do innovation isn't you don't go look at somebody  
8 else's work. You just do innovation in your own little  
9 world and make sure it's the best it can possibly be. So  
10 the answer would be no.

09:06:05

11 Q. BY MR. JACOBS: Similarly, as you have  
12 expanded the markets in which Android is applied, say, to  
13 tablets, have you asked or conveyed that any such review  
14 should be conducted?

15 MS. ANDERSON: Objection. Form. And also  
16 same instruction on grounds of privilege. You shouldn't  
17 disclose communications with counsel.

09:06:17

18 THE WITNESS: It's true for every Android  
19 release, independent of what the form factor it's  
20 released in.

09:06:27

21 Q. BY MR. JACOBS: And by "form factor," you're  
22 referring to, for example, tablets as opposed to  
23 handsets?

24 A. Yeah, you know, four inch screens versus  
25 ten-inch screens. There's no difference, in my mind.

09:06:37

1 ~~negotiations with the execs.~~

2 Q. ~~And that's so that you can protect the option~~  
3 ~~of going clean room; correct?~~

4 A. ~~Yeah. I don't want to taint myself.~~

5 Q. ~~And we've talked about your clean room, the~~ 15:57:11  
6 ~~way the clean room got established and how you~~  
7 ~~communicated the rules of the clean room.~~

8 One thing we didn't talk about specifically  
9 in the context of clean room is patent issues. So did  
10 you have an understanding that the clean room would bear 15:57:23  
11 on the question of whether Android would infringe  
12 Sun/Oracle America patents?

13 MS. ANDERSON: ~~Objection. Form.~~

14 ~~Also, caution the witness to the extent~~  
15 ~~responding would cause you to reveal communication with~~ 15:57:36  
16 ~~counsel, I instruct you not to answer on the grounds of~~  
17 ~~attorney-client privilege.~~

18 THE WITNESS: No. Generally speaking, a  
19 clean room approach doesn't protect against patents.  
20 There's no expectation. 15:57:47

21 As I said previously, VM technology has been  
22 around forever. I didn't think the stuff that we were  
23 doing was going to be a violation of anybody's IP.

24 Q. ~~BY MR. JACOBS: And so that was based without~~  
25 ~~reviewing the IP? That was kind of an intuition on your~~ 15:57:56

1 I declare under the penalty of perjury  
2 under the laws of the State of California that the  
3 foregoing is true and correct.

4 Executed on August 31, 2011,  
5 at Mountain View, CA.

10  
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12 SIGNATURE OF THE WITNESS  
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1 STATE OF CALIFORNIA ) ss:

2 COUNTY OF MARIN )

3

4 I, LESLIE ROCKWOOD, CSR No. 3462, do hereby  
5 certify:

6 That the foregoing deposition testimony was  
7 taken before me at the time and place therein set forth  
8 and at which time the witness was administered the oath;

9 That testimony of the witness and all  
10 objections made by counsel at the time of the examination  
11 were recorded stenographically by me, and were thereafter  
12 transcribed under my direction and supervision, and that  
13 the foregoing pages contain a full, true and accurate  
14 record of all proceedings and testimony to the best of my  
15 skill and ability.

16 I further certify that I am neither counsel  
17 for any party to said action, nor am I related to any  
18 party to said action, nor am I in any way interested in  
19 the outcome thereof.

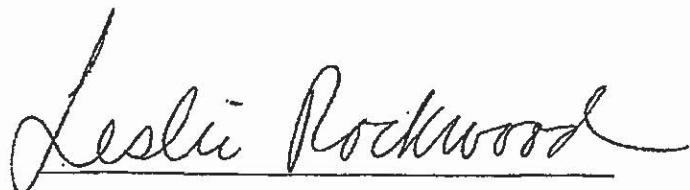
20 IN WITNESS WHEREOF, I have subscribed my name  
21 this 28th day of July, 2011.

22

23

24

25



LESLIE ROCKWOOD, CSR. NO. 3462

1 I N D E X  
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6 WEDNESDAY, JULY 27, 2011  
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9 WITNESS  
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ANDREW E. RUBIN, Personal Capacity

By Mr. Jacobs

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